

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLAUDIO NAVARRO ZAVALA, *individually and on behalf of all others similarly situated*,

Plaintiff,

-against-

TRECE CORP. (d/b/a TRECE MEXICAN RESTAURANT), 54 EAST ENTERTAINMENT INC. (d/b/a TRECE MEXICAN RESTAURANT), 54 EAST ENTERTAINMENT MGT INC. (d/b/a TRECE MEXICAN RESTAURANT), AESOOK CHOI and JOEL LIM,

Defendants.

Civil Action Number
1:18-cv-01382 (ER)

ANSWER WITH
AFFIRMATIVE DEFENSES

Defendants TRECE CORP. (d/b/a TRECE MEXICAN RESTAURANT, 54 EAST ENTERTAINMENT INC. (d/b/a TRECE MEXICAN RESTAURANT), AESOOK CHOI and JOEL LIM (collectively hereinafter “Defendants”), by and through their undersigned attorneys, the Law Offices of T. Stephen Song, P.C., as and for their Answer and Affirmative Defenses to the Complaint filed by Plaintiff, CLAUDIO NAVARRO ZAVALA, hereby responds as follows:

1. It is admitted that Plaintiff is a former employee of Defendant TRECE CORP. As to the rest of the allegations in Paragraph 1, they are denied.
2. The allegations in Paragraph 2 are denied.
3. The allegations in Paragraph 3 are denied.
4. It is admitted that Plaintiff is a former employee of Defendant TRECE CORP. As to the rest of the allegations in Paragraph 4, they are denied.

5. The allegations in Paragraph 5 are admitted.

6. The allegations in Paragraph 6 are denied.

7. The allegations in Paragraph 7 are denied.

8. The allegations in Paragraph 8 are denied.

9. The allegations in Paragraph 9 are denied.

10. The allegations in Paragraph 10 are denied.

11. The allegations contained in paragraph 11 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 11 of the Complaint.

12. The allegations contained in paragraph 12 of the Complaint set forth legal conclusions for which no response is required.

13. The allegations contained in paragraph 13 of the Complaint set forth legal conclusions for which no response is required.

14. The allegations contained in paragraph 14 of the Complaint set forth legal conclusions for which no response is required.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments made in paragraph 15 of the Complaint, and therefore deny the same.

16. The allegations contained in paragraph 16 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 16 of the Complaint.

17. The phrase “Defendants owned operated, and/or controlled a Mexican Restaurant” is unintelligible and not subject to reasonable interpretation and therefore

Defendants lack the knowledge or information sufficient to for a belief as to the truth of the allegations contained in Paragraph 17 and therefore deny same.

18. The allegations in Paragraph 18 are admitted.

19. The allegations in Paragraph 19 are admitted.

20. The allegations in paragraph 20 are denied.

21. The allegations in paragraph 21 are denied.

22. The allegations in paragraph 22 are denied.

23. The term “Defendants operated a Mexican Restaurant” is unintelligible and not subject to reasonable interpretation and therefore Defendants lack the knowledge or information sufficient to for a belief as to the truth of the allegations contained in Paragraph 23 and therefore deny same.

24. The allegations in paragraph 24 are denied.

25. The allegations in paragraph 25 are denied.

26. The allegations in paragraph 26 are denied.

27. The allegations in paragraph 27 are denied.

28. The allegations in paragraph 28 are denied.

29. The allegations in paragraph 29 are denied.

30. The allegations in paragraph 30 are denied.

31. The allegations in paragraph 31 are denied.

32. The allegations in paragraph 32 are denied.

33. Defendants lack the knowledge or information sufficient to for a belief as to the truth of the allegations contained in Paragraph 33 and therefore deny same.

34. It is admitted that Plaintiff is a former employee of Defendant TRECE CORP. As to the rest of the allegations in Paragraph 34, they are denied.

35. The allegations contained in paragraph 35 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 35 of the Complaint.

36. It is admitted that Plaintiff is a former employee of Defendant TRECE CORP. As to the rest of the allegations in Paragraph 36, they are denied.

37. It is admitted that Plaintiff is a former employee of Defendant TRECE CORP. and worked as dishwasher and porter. As to the rest of the allegations in Paragraph 36, they are denied.

38. Defendants lack the knowledge or information sufficient to for a belief as to the truth of the allegations contained in paragraph 38 and therefore deny same

39. The allegations contained in paragraph 39 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 39 of the Complaint.

40. The allegations in paragraph 40 are denied.

41. The allegations in paragraph 41 are denied.

42. The allegations in paragraph 42 are denied.

43. The allegations in paragraph 43 are denied.

44. The allegations in paragraph 44 are denied.

45. The allegations in paragraph 45 are denied.

46. The allegations in paragraph 46 are denied.

47. The allegations in paragraph 47 are denied.

48. The allegations in paragraph 48 are denied.

49. The allegations in paragraph 49 are denied.

50. The allegations in paragraph 50 are denied.

51. The allegations in paragraph 51 are denied.

52. The allegations in paragraph 52 are denied.

53. The allegations in paragraph 53 are denied.

54. The allegations in paragraph 54 are denied.

55. The allegations in paragraph 55 are denied.

56. The allegations in paragraph 56 are denied.

57. The allegations in paragraph 57 are denied.

58. The allegations in paragraph 58 are denied.

59. The allegations in paragraph 59 are denied.

60. The allegations in paragraph 60 are denied.

61. The allegations in paragraph 61 are denied.

62. The allegations in paragraph 62 are denied.

63. The allegations in paragraph 63 are denied.

64. The allegations in paragraph 64 are denied.

65. The allegations in paragraph 65 are denied.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments made in paragraph 66 of the Complaint, and therefore deny the same.

67. The allegations in paragraph 67 are denied.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments made in paragraph 68 of the Complaint, and therefore deny the same.

69. Defendants incorporate their responses above as if set forth at length herein.

70. The allegations in paragraph 70 are denied.

71. The allegations contained in paragraph 71 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 71 of the Complaint.

72. The allegations contained in paragraph 72 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 72 of the Complaint.

73. The allegations in paragraph 73 are denied.

74. The allegations in paragraph 74 are denied.

75. The allegations in paragraph 75 are denied.

76. Defendants incorporate their responses above as if set forth at length herein.

77. The allegations contained in paragraph 77 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 77 of the Complaint.

78. The allegations contained in paragraph 78 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 78 of the Complaint.

79. The allegations contained in paragraph 79 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 79 of the Complaint.

80. The allegations in paragraph 80 are denied.

81. The allegations in paragraph 81 are denied.

82. The allegations in paragraph 82 are denied.

83. Defendants incorporate their responses above as if set forth at length herein.

84. The allegations in paragraph 84 are denied.

85. The allegations in paragraph 85 are denied.

86. The allegations in paragraph 86 are denied.

87. The allegations in paragraph 87 are denied.

88. Defendants incorporate their responses above as if set forth at length herein.

89. The allegations in paragraph 89 are denied.

90. The allegations in paragraph 90 are denied.

91. The allegations in paragraph 91 are denied.

92. The allegations in paragraph 92 are denied.

93. Defendants incorporate their responses above as if set forth at length herein.

94. The allegations contained in paragraph 94 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 94 of the Complaint.

95. The allegations contained in paragraph 95 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 95 of the Complaint.

96. The allegations in paragraph 96 are denied.

97. Defendants incorporate their responses above as if set forth at length herein.

98. The allegations contained in paragraph 98 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 98 of the Complaint.

99. The allegations in paragraph 99 are denied.

100. Defendants incorporate their responses above as if set forth at length herein.

101. The allegations contained in paragraph 101 of the Complaint set forth legal conclusions for which no response is required. To the extent a response is required; Defendants deny the allegations in paragraph 101 of the Complaint.

102. The allegations in paragraph 102 are denied.

103. Defendants incorporate their responses above as if set forth at length herein.

104. The allegations in paragraph 104 are denied.

105. The allegations in paragraph 105 are denied.

AFFIRMATIVE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff has failed, in whole or in part, to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitation.

THIRD SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, estoppel, waiver and unclean hands.

FOURTH SEPARATE DEFENSE

The Complaint is barred, in whole or in part, as any acts or omissions by Defendants were in good faith, and Defendants had reasonable grounds for believing that any such acts or omissions were not in violation of New York Labor Law ("NYLL"), the Fair Labor Standards Act ("FLSA"), and/or the administrative regulations, orders, rulings, interpretations and/or administrative practices or enforcement policies of the Administrator of the Wage and Hour

Division of the United States Department of Labor and/or of the New York State Department of Labor. As such, Defendants assert a lack of willfulness, recklessness, or intent to violate any applicable state or federal law.

FIFTH SEPARATE DEFENSE

Plaintiff has failed to mitigate his damages.

SIXTH SEPARATE DEFENSE

Plaintiff's claims have failed, in whole or in part, based on the doctrine of accord and satisfaction.

SEVENTH SEPARATE DEFENSE

Defendants' at all relevant times made a good faith effort to comply with all applicable statutes of laws and, therefore, Plaintiff cannot recover punitive or liquidated damages.

EIGHTH SEPARATE DEFENSE

Plaintiff's claims are barred because of the existence of exceptions, exclusions, or exemptions provided in the FLSA and NYLL.

NINTH SEPARATE DEFENSE

Plaintiff was paid for all of the hours that he worked.

TENTH SEPARATE DEFENSE

Defendants presently have insufficient knowledge or information upon which a belief can be formed as to whether Defendants may have additional, but yet unknown and unstated, affirmative defenses in the event that discovery reveals that additional defenses are appropriate.

WHEREFORE, the allegations in paragraphs A through U on pages 18 through 21 of the Complaint are demands for judgment and relief to which no responses are required; however,

to the extent a response is required, Defendants deny that Plaintiff is entitled to judgment on any relief whatsoever.

Dated: Flushing, New York
May 4, 2018

Yours, etc.

/s/ T. Stephen Song
T. Stephen Song (TS 1462)
LAW OFFICES OF T. STEPHEN SONG, P.C.
Attorney for Defendants
154-08 Northern Blvd., Suite 2G
Flushing, New York 11354
ssong@stephensong.net
Tel: 718-321-0770
Fax: 718-321-0799

TO: Michael Faillace, Esq.
Michael A. Faillace & Associates, P.C.
Attorneys for Plaintiff
60 East 42nd Street, Suite 4510
New York, NY 10165
Tel: 212-317-1200